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7 *Attorney for Plaintiff*

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 LOREN P. SIMPSON, M.D.,
11 LTC, U.S. ARMY RESERVE,

12 Plaintiff,

13 vs.

14 WASHOE TRIBE OF NEVADA AND
15 CALIFORNIA AND THE WASHOE
16 TRIBAL HEALTH CENTER,

17 Defendants.

3:18-cv-00054-LRH-WGC

18 **ORDER GRANTING**
19 **MOTION FOR ORDER**
20 **DIRECTING CLERK OF THIS**
21 **HONORABLE COURT TO**
22 **REFUND FILING FEE AND**
23 **RELATED COST AND**
24 **PROPOSED ORDER**

25 COMES NOW Plaintiff LOREN P. SIMPSON, M.D., LTC, U.S. ARMY
26 RESERVE, (LTC Simpson) by and through his attorney, and moves this Court to
direct the Court Clerk to return the filing fee (\$400.00) and the fee for related
cost for his Counsel filing the Verified Petition to Practice *Pro Hac Vice* (\$250.00).

LTC Simpson filed his action as a member of the United States Army
Reserve alleging violations of the Uniformed Services Employment and
Reemployment Rights Act, ("USERRA"), 38 U.S.C. § 4323(h)(1) which authorized
him to commence his civil action and to file any petition or motion without being
required to prepay fees and costs or give security for them. Plaintiff states as
follows:

1 **A. No fees or court costs may be charged or taxed against an individual**
2 **if he is claiming rights under USERRA.**

3 Congress passed USERRA (the "Act") in 1994 to encourage non-career
4 service in the Uniformed Services by, *inter alia*, prohibiting discrimination
5 against persons on the basis of membership in the armed forces. *Townsend v.*
6 *University of Alaska*, 543 F. 3d 478 (9th Cir. 2008). Under the Act,

7
8 A person who is a member of, applies to be a member of,
9 performs, has performed, applies to perform, or has an
10 obligation to perform service in a uniformed service shall not
11 be denied initial employment, reemployment, retention in
12 employment, promotion, or any benefit of employment by
an employer on the basis of that membership, application
for membership, performance of service, application for service,
or obligation.

13 38 U.S.C. § 4311(a). Section 4323 provides: "[N]o fees or court costs may be
14 charged or taxed against any person claiming rights under [USERRA]." 38 U.S.C.
15 § 4323(h)(1); *see also* 20 C.F.R. § 1009.310. The Department of Labor is in accord:

16 No fees or court costs may be charged or taxed against an
17 individual if he or she is claiming rights under the Act
18 [38 U.S.C. § 4301, et seq.] If the individual obtains private
19 counsel for any action or proceeding to enforce a provision
20 of the Act, [38 U.S.C. § 4301, et seq.], and prevails, the court
21 may award reasonable attorney fees, expert witness fees, and
other litigation expenses. *See* 20 C.F.R. § 1002.310; Federal
Register, Vol. 70, o. 242/Monday, December 19, 2005/Rules
and Regulations; 38 U.S.C. § 4323(h)(1).

22 Furthermore, courts addressing this issue are unanimous: "USERRA
23 provides that '[n]o fees or court costs may be charged or taxed against any person
24 claiming rights under this chapter.'" *Davis v. Advocate Health Ctr. Patient Care*
25 *Exp.*, 523 F.3d 681, 685 (7th Cir. 2008):

1 In light of the plain language of 38 U.S.C. § 4323(h)(1) and
2 Congress's intent, in USERRA and elsewhere, to lessen the
3 costs of litigation for veterans, we hold that 38 U.S.C. § 4323(h)(1)
4 permits a USERRA litigant to initiate suit without prepaying the
5 filing fee. Because Davis has already paid his filing fee to proceed
6 in this court, we ORDER the clerk of this court to refund Davis's
7 appellate filing fee.

8 **B. Since LTC Simpson is entitled to the protections of USERRA, costs
9 should not be taxed against him and the filing fee and related cost for
10 the filing of the Petition for *Pro Hac Vice* practice should be returned to
11 his undersigned counsel of record by the Clerk of this Honorable Court.**

12 LTC Simpson is the sole Plaintiff in this action. Plaintiff is a Veteran of
13 the United States Armed Forces, and the character of his service, as determined
14 by the United States Army, is honorable. LTC Simpson filed his civil complaint in
15 this Court pursuant to the USERRA. Thus, under § 4323(h) no filing fee was
16 required, and he could have properly proceeded with his case without fees or
17 related costs charged to him, including his legal counsel's cost for filing his
18 Petition for *Pro Hac Vice* practice that was approved.

19 WHEREFORE, the Plaintiff prays that this Court issue an Order
20 requiring the Clerk of the Court return to his legal counsel the USERRA filing
21 fee and the *Pro Hac Vice* Petition fee at his addresses of record.

22 Dated this September 5, 2018

23 By /s/ Dennis G. Chappabitty
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IT IS SO ORDERED:

William G. Cobb

UNITED STATES MAGISTRATE JUDGE

DATED: September 21, 2018